

Wichita, Kansas

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION**

R-CON CORPORATION

Petitioner

and

Case 17-RM-834

TEAMSTERS LOCAL UNION NO. 795¹

Union

DECISION AND ORDER

Upon a petition duly filed pursuant to Section 9(b) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. Rulings made by the hearing officer at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds as follows:

1. The Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The name of the Union appears as amended at the hearing.

² The Petitioner is a State of Kansas Corporation engaged in the manufacture and delivery of ready-mix concrete from its various facilities located in Kansas. During the preceding 12-month period, the Petitioner purchased and received goods and materials valued in excess of \$50,000 directly from sources located outside the State of Kansas.

3. The Petitioner seeks an election in a bargaining unit different than that historically recognized by the Petitioner for more than 35 years. To substantiate its claim for an election in a unit other than that historically recognized, the Petitioner asserts that recent, significant changes in the historical unit, as well as in the business operations of the Petitioner, render the historical bargaining unit inappropriate. More specifically, the Petitioner contends that the merger of the Petitioner's union and non-union operations two years ago has so blurred the separate identity of the historically separate union operation, that the bargaining history no longer has a controlling effect.

In contrast, the Union asserts that the Petitioner is merely trying to decertify the long-recognized bargaining unit. The Union contends that the historical unit is still appropriate, and also argues that the remaining single facility of the historical unit is presumptively appropriate.

CONCLUSION

Based upon a review of all relevant factors, I find that the evidence does not warrant alteration of the historical bargaining unit and a stable 35 year bargaining relationship.

FACTS

In May 1947, Ritchie Corporation formed and began operating a ready-mix business called Allen's Concrete, Inc., herein called Allen's. Allen's voluntarily recognized the Union as the representative of its ready-mix drivers at its facilities in Wichita, Kansas. The parties executed successive collective bargaining agreements for the Allen's drivers, the most recent of which was effective by its terms from January 1, 1999 through December 31, 2002. The voluntarily recognized unit, described in Article I

of the parties' collective-bargaining agreement, is as follows: "The Company recognizes the Union as the exclusive representative of the truck drivers and warehousemen employed by the Company at its ready-mixed concrete plants in Wichita, Kansas,...".

Throughout the years, as a unionized operation, Allen's operated multiple facilities in Wichita. For instance, in 1996, Allen's acquired the assets of Walt Keeler, Company, herein called Keeler, another Wichita based ready-mix company. The employees of Keeler became members of the bargaining unit, and with the 1996 acquisition of Keeler, Allen's had four Wichita facilities; the existing plant on Northshore Boulevard, a plant on Webb Road, a plant on Lincoln Street, and a plant on Mosley Street. Within months of the Keeler acquisition, the Mosley Street plant was shut down and sold. The Webb Road plant operated seasonally until the fall of 2000, when it was shut down for the winter season and was never reopened. With the closure of the Webb Road plant in the fall of 2000, the unit was comprised of only the Lincoln Street plant and the Northshore Boulevard plant.

Historically Ritchie Corporation not only owned and operated the unionized Allen's facilities, but also owned and operated a separate non-union ready-mix operation, with plants located in several small communities outside the Wichita city limits. Ritchie Corporation's acquisition of non-union ready-mix companies began in 1996 when Ritchie Corporation purchased a non-union ready-mix operation called Ark Valley Ready Mix, which had existing plants outside the Wichita city limits in Andover and Augusta, Kansas. Ritchie Corporation continued to use the Ark Valley name for its newly acquired operations. After purchasing Ark Valley, Ritchie Corporation also continued its acquisition of other non-union ready mix companies in other small towns surrounding

Wichita. Thus, in 1999, Ritchie's Ark Valley operation formed a joint venture with El Dorado Ready Mix, located in El Dorado, Kansas and by September 2000, had wholly purchased El Dorado Ready Mix. Next, in July 2000, Ritchie Corporation purchased Hershey Ready Mix located in Derby, Kansas. As with El Dorado Ready Mix, Hershey Ready Mix was added to Ritchie's Ark Valley umbrella. While Ritchie Corporation owned both Allen's and the companies under the Ark Valley umbrella, the unionized and non-Union operations were independent of each other, sharing no equipment, employees, supervisors, or dispatching, and in fact, operated similar to competitors.

Ritchie Corporation continued to separately operate both the non-union and Union components of its overall ready-mix operations from 1996 through January 1, 2001, when it merged its both Union and non-union operations under the name of R-Con.³ With the merger in January 2001, R-Con consolidated its management functions, created a driver supervisor, and combined the dispatch functions of both operations.

Prior to the merger, Allen's concrete was managed and supervised by General Manager Kent Webber, Production Manager Phillip Brothers, Dispatch Manager Craig Bartlett, Maintenance Foreman Russ Keeler and Office Manager Michelle Marsh. Prior to the merger, Ark Valley's General Manager was Rick Heise. Heise reported to J.D. Munley, who was also a corporate Vice-President of Allen's, but who apparently played no supervisory or managerial role with Allen's. Rick Payne, former owner of Hershey Concrete in Derby, Kansas, was a territorial manager for Ark Valley and Bill Snyder operated as a Plant Manager for Ark Valley.

³ R-Con was actually incorporated by Ritchie Corporation in 1947, but the corporate identity had never been used prior to January 1, 2001.

With the merger of Allen's and Ark Valley into R-Con, Matt Ritchie is now the General manager, Rick Heise is the Operations and Production Manager, Bill Snyder is the Dispatch Manager, and Lori Payne is the Office Manager. Additionally, with the merger, the Petitioner created a new position of Safety/Driver supervisor, currently held by Steve Spencer. Spencer is the supervisor for all drivers at all the Petitioner's facilities, and spends most of his workday traveling from facility to facility, dealing with driver issues. Bill Snyder, the Dispatch Manager, also has supervisory authority over all of the drivers, because of his ultimate dispatch authority. Each plant also employs a Plant Operator who has direct supervisory authority for the plant loader operators and maintenance employees, but has no direct supervisory responsibility for the drivers. However, the Plant Operators are responsible for making sure that ready mix is properly produced and batched from the plant, which involves routine interaction with the ready-mix drivers stationed at their facilities. The Plant Operators also may act as a conduit for information from the dispatch department or other headquarters managers to a driver, or vice versa.

Since the merger, dispatch operations have been combined for both the Union and the non-union operations. Dispatch is now based solely on the distance of delivery to the batching plant, instead of any delivery distinction based on the identity of the batching plant. The Northshore Boulevard plant is 20 to 25 miles from the Derby plant, over 20 miles from the Andover Plant, and 35 miles from the Eldorado plant.

After the merger, drivers at the unionized plants on Lincoln Street and Northshore Boulevard continued to report to their home plants, until December 2001, when the Petitioner shut down the operations at the Lincoln Street plant. The thirteen unit drivers

stationed at that plant were given the opportunity to transfer to either the unionized Northshore Boulevard plant or the non-Union plants in Derby or Andover. Six of the drivers transferred to the Northshore Boulevard plant. Four of the Lincoln drivers transferred to the Derby plant and the remaining three drivers transferred to the Andover plant. These permanent transfers were accomplished after bargaining with the Union. Other than the closure of the Lincoln Street plant in December 2001, resulting in the foregoing transfers, there have been no driver transfers from plant to plant since the merger of Allen's and Ark Valley. There are currently 20 drivers in the unit at the Northshore Boulevard plant. There are 18 drivers at the plant in Andover, 3 drivers stationed at the Eldorado plant, and 10 drivers at the Derby plant.

The record discloses that there is little, if any, daily interaction between the drivers at the various plants. The drivers from the Northshore Boulevard plant appear for work daily at the Northshore Boulevard plant and are dispatched from that plant for the vast majority of their loads. Only infrequently are drivers dispatched from plants other than their own. Situations where a driver could be dispatched from a plant other than his home plant might include instances where a job required more loads than could be delivered by the drivers stationed at that plant, or weather situations where only certain drivers are on duty. These situations have been very infrequent. For example, drivers from the Eldorado, Derby and Andover plants are only dispatched from the Northshore Boulevard plant if all of the Northshore drivers have already been dispatched.

The Unit employees at the Northshore Boulevard plant are covered by the terms of the parties' collective-bargaining agreement. For ease of dispatch, the Union's negotiated dispatch rules have also been applied to the Andover, Derby and Eldorado

plants. All of Petitioner's employees receive the same health care and retirement benefits. Wages and vacations for employees at the Northshore Boulevard plant are subject to the Union contract. However, the wages paid to the Andover, Derby and Eldorado plant employees, are virtually identical to the Northshore Boulevard plant's contractually-mandated wages. Vacation policies differ for the two groups of employees, and are based on the contract at Northshore Boulevard plant, and past practice for the remaining non-Union plants. All employees are subject to the Petitioner's employee handbook, which issued shortly after the merger. Discipline for all drivers is issued by Petitioner's headquarters supervisors. Thus, Heise, Snyder and Spenser determine appropriate discipline for all drivers and issue any written disciplinary notices, up to and including termination.

ANALYSIS

The Board's longstanding policy is that the party challenging an historical unit bears a heavy burden to show that the unit is no longer appropriate. The Board is reluctant to disturb bargaining units that were established by mutual agreement, especially where there are long histories of harmonious collective bargaining. Even in circumstances where a historical unit differs from one that might be found more appropriate by the Board, where the parties have mutually defined the unit, the Board will not typically upset such history, absent facts showing the unit contravenes the Act or established Board policy. St. Joseph Hospital & Medical Center, 219 NLRB 892 (1975); Great Atlantic & Pacific Tea Company, Inc., 153 NLRB 1549 (1965); Marion Power Shovel Company, Inc., 230 NLRB 576 (1977); Red Coats, Inc., 328 NLRB 205 (1999). In fact, the Board has held that units with extensive bargaining history should remain

intact unless repugnant to Board policy. P.J. Dick Contracting, 290 NLRB 150 (1988). Recent, compelling circumstances are required to overcome the significance of bargaining history. St. Joseph Hospital, supra; Marion Power Shovel, supra; Rock-Tenn Company, Inc., 274 NLRB 772 (1985); Batesville Casket Company, Inc., 283 NLRB 795 (1987); Children's Hospital of San Francisco, 312 NLRB 920 (1993); Union Electric Co., 217 NLRB 666, 667 (1975).

I find that the Petitioner has failed to show recent, compelling circumstances sufficient to overcome the long bargaining history in the recognized Wichita, Kansas unit. In Batesville Casket, supra, the Board was confronted with a unit clarification petition by two separately incorporated subsidiaries seeking to sever a 50-year historical single unit consisting of two separate plants, into separate units for each plant. The Board held that, despite the fact that the two companies functioned separately and autonomously, the changes relied on by the petitioner to show the asserted separateness and autonomy of the unit employees in its two plants were not recent. The Board therefore held that the changes relied on by the petitioner could not be shown to have destroyed the long bargaining relationship between the parties.

Based upon my review of the foregoing and the record in its entirety, I find that the Petitioner has failed to establish that the operational changes resulting from the Petitioner's merger of Allen's and the Ark Valley companies amount to recent, significant changes, which warrant upsetting the long-standing unit composition, and successful bargaining relationship between the Union and the Petitioner. The Petitioner's merger was over two years ago, which is not a recent change as contemplated by the Board in Batesville. There is no evidence that the merger of the two operations has been

phased in. Instead, the evidence supports the conclusion that changes were implemented two years ago and have remained unchanged during the intervening years.

In addition, I find that the changes resulting from the merger did not result in such substantial changes to the operations of the Northshore Boulevard plant, so as to render the historic unit inappropriate. The Petitioner has continuously operated its Union facilities in Wichita and its and non-union facilities outside the city limits since at least 1996. The change in supervision and location of dispatch two years ago has done little to change the nature of the work of the unit employees, whose jobs remain basically unchanged. The employees work from the same work location at the Northshore Boulevard plant and work with the same equipment. Employees from the plants outside the city limits of Wichita very rarely interact with the Northshore Boulevard plant employees, just as they did prior to the merger.

While an overall unit of drivers from both inside the Wichita City limits and in the surrounding communities might well be appropriate, the issue in this situation is not whether a previously unrepresented unit is appropriate, but whether a historically recognized unit is no longer appropriate. Given the continued separateness of the unit employees from the drivers at the Petitioner's other facilities, and the lengthy bargaining history, I find that the unit has not been rendered inappropriate by any organizational and functional changes made by the Petitioner, whether recent or over time.

Given the continued appropriateness of the Wichita bargaining unit, the question remains as to whether there is a sufficient showing to support the RM petition and raise a question concerning representation warranting an election. Based upon my review of the record its entirety, I administratively find that the Petitioner has not demonstrated a good-

faith reasonable uncertainty as to the Union's continuing majority status in the existing unit, as required by the Board in its decision in Levitz Furniture Company, 333 NLRB No. 105 (March 29, 2001), and therefore dismiss the RM petition. The Petitioner presented no evidence of loss of majority support in the unit found appropriate.

ORDER

Based on the above, and the record as a whole, **IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by February 5, 2003.

Dated: January 22, 2003

(SEAL)

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